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5 IN THE CIRCUIT COURT OF THE STATE OF OREGON
6 FOR THE COUNTY OF YAMHILL

7 THE SAUNDERS GROUP, an Oregon limited
8 liability company,

9 Plaintiff,

10 v.

11 KRISTIN HILDEBRAND, an individual, RYAN
12 HILDEBRAND, an individual, GABRIELLE
13 HARRIS, an individual, and HARRIS
14 EXCAVATION, INC., an Oregon Corporation,

Defendants

Case No. 24CV41934

**DEFENDANTS' JOINT ANSWER,
AFFIRMATIVE DEFENSES, AND
COUNTERCLAIMS**

Filing Fee: \$884.00

Fee Authority: ORS 21.160(1)(d)

Counterclaim Amount: \$1,531,698.49

Jury Trial Requested

**NOT SUBJECT TO MANDATORY
ARBITRATION**

15 In answer to the Complaint (the "Complaint"), Defendants Kristin Hildebrand, Ryan
16 Hildebrand (together, the "Hildebrands"), Gabrielle Harris ("Harris"), and Harris Excavation, Inc.
17 ("Harris Excavation") (collectively "Defendants"), by and through their attorneys, admit, deny,
18 and allege as follows:

19 1.

20 As to Paragraphs 1-5, admit.

21 2.

22 As to Paragraphs 6 and 7, deny.

23 3.

24 As to Paragraph 8, deny that the map attached to the Complaint as Exhibit B is an
25 unmodified map from the Yamhill County Assessor's office website.

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4.

As to Paragraph 9, admit Plaintiff holds a DOGAMI operator permit for reclamation activities only. Defendants lack sufficient information to answer any remaining allegations, and therefore deny.

5.

As to Paragraph 10, Defendants lack sufficient information to answer, and therefore deny.

6.

As to Paragraph 11, deny.

7.

As to Paragraphs 12 and 13, admit.

8.

As to Paragraph 14, this paragraph includes a legal conclusion for which no response is required, but, to the extent a response is required, Defendants deny.

9.

As to Paragraphs 15-30, Defendants lack sufficient information regarding the factual allegations and therefore deny. Defendants also deny all legal conclusions asserted therein.

10.

As to Paragraph 31, admit.

11.

As to Paragraph 32, admit.

12.

As to Paragraphs 33 and 34, admit that Robert and Ruth Osborne executed the Quitclaim Deeds attached to the Complaint as Exhibits R and S. Defendants deny that any Profit exists, and deny that the Quitclaim Deeds convey any rights or interests whatsoever. Defendants deny any remaining allegations.

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13.
As to Paragraph 35, Defendants lack sufficient information to answer the first two sentences, and therefore deny. As to the third sentence of Paragraph 35, deny.

14.
As to Paragraph 36, deny.

15.
As to Paragraph 37, admit Plaintiff trespassed, admit Kristin Hildebrand installed “No Trespassing” signs and video cameras on Hildebrands’ property and Tax Lot 1600, and deny all remaining allegations.

16.
As to Paragraph 38, the first sentence is too vague for Defendants to respond, and therefore Defendants deny. Defendants admit Plaintiff holds a DOGAMI operator permit for reclamation activities only. Defendants deny all remaining allegations.

17.
As to Paragraph 39, admit that Harris contacted Renee about access through their property only after Plaintiff informed Harris in writing that Renee would grant such access through their property, as part of Plaintiff’s offer to split the DOGAMI operator permit with Harris. Defendants deny any remaining allegations.

18.
As to Paragraph 40, admit counsel for Plaintiff sent the letter to Harris that is attached as Exhibit T to the Complaint. Defendants deny any allegations contrary to the letter, and deny that the Osbornes executed the Quitclaim Deeds attached as Exhibits R and S to the Complaint at the time of the letter. Defendants deny any remaining allegations.

19.
As to Paragraph 41, admit that counsel for Harris sent to counsel for Plaintiff the letter attached as Exhibit U to the Complaint. Defendants deny any allegations contrary to the letter, and

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1 cannot respond to Plaintiff's assertion that Harris's position is that "Saunders does not grant access
2 for Saunders' current quarrying," as such allegation is indecipherable, and as such deny.
3 Defendants deny any remaining allegations.

4 20.

5 As to Paragraph 42, admit.

6 21.

7 As to Paragraph 43, admit Kristin Hildebrand installed "No Trespassing" signs and
8 cameras on Hildebrands' property and Tax Lot 1600, which signs Plaintiff has covered with
9 dumped material, including garbage and refuse. Defendants deny that they have obstructed or
10 interfered with Plaintiff's entry on Hildebrands' and Harris's properties, and deny any remaining
11 allegations.

12 22.

13 As to Paragraphs 44, 50, 56, Defendants respond consistently with their responses set forth
14 herein.

15 23.

16 As to Paragraphs 45-49, 51-55, and 57-59, these paragraphs include legal conclusions and
17 claims for relief for which no response is required, but, to the extent a response is required,
18 Defendants deny.

19 **FIRST AFFIRMATIVE DEFENSE**

20 **(Failure to State a Claim – Attorney Fees)**

21 24.

22 In Complaint Paragraph 49, Plaintiff claims a right to attorney fees under its Declaratory
23 Judgment claim pursuant to ORS 20.080, which statute is inapplicable to allow an award of
24 attorney fees related to a claim for Declaratory Judgment.

25 ///

26 ///

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1 25.

2 Even if Plaintiff had plead the right to attorney fees under ORS 20.080 with an appropriate
3 claim for relief, which it did not, Plaintiff does not allege, and Plaintiff did not in fact, serve a
4 demand for payment of its claim to any of the Defendants in this case 30 days prior to
5 commencement of the action, which demand is a prerequisite to an award of attorney fees under
6 the statute. Further, the amount of damages claimed by Plaintiff in its Complaint exceeds the
7 statutory cap of “\$10,000 or less” in order to seek attorney fees.

8 26.

9 Plaintiff fails to state a basis for attorney fees anywhere in its Complaint, other than its
10 inapplicable reference in Paragraph 49.

11 27.

12 Plaintiff fails to state ultimate facts from which relief may be granted in the form of an
13 award of attorney fees, and therefore no such relief may be awarded by the Court.

14 **SECOND AFFIRMATIVE DEFENSE**

15 **(Failure to State a Claim – Harris Excavation, Inc.)**

16 28.

17 In Complaint Paragraph 5, Plaintiff alleges that Harris Excavation, Inc. is an Oregon
18 corporation licensed to do business in Oregon.

19 29.

20 Plaintiff’s Complaint makes no further allegations related to Harris Excavation, Inc.
21 whatsoever.

22 30.

23 Plaintiff fails to state ultimate facts from which relief may be granted against Harris
24 Excavation, Inc., or to even justify Plaintiff’s inclusion of Harris Excavation, Inc. as a party in this
25 case, and therefore no relief may be awarded to Plaintiff against Harris Excavation, Inc. in this
26 case.

THIRD AFFIRMATIVE DEFENSE
(Failure to State a Claim – Tax Lot 1600)

31.

In Complaint Paragraph 7, Plaintiff defines the “Disputed Area” in this case to include Tax Lot 1600.

32.

In Complaint Paragraph 13, Plaintiff alleges that Tax Lot 1600 is owned by Gabrielle Harris.

33.

Plaintiff makes no allegations or claims in its Complaint related to any rights or interests it may hold in Tax Lot 1600, nor any real property conveyances or transactions from which Plaintiff could have come to hold any such rights or interests.

34.

Plaintiff fails to state ultimate facts from which relief may be granted to Plaintiff related to Tax Lot 1600, and therefore no such relief may be awarded by the Court.

FOURTH AFFIRMATIVE DEFENSE
(Failure to State a Claim – Interference with Easement)

35.

In Complaint Paragraph 37, Plaintiff alleges, “Hildebrands and Harris have denied Saunders access to the Disputed Area,” which allegation is a conclusory statement not supported by any facts alleged in the Complaint.

36.

In Complaint Paragraphs 37 and 43, Plaintiff alleges that the Hildebrands and/or Harris installed “No Trespassing” signs and cameras on Hildebrands’ property. Such action, if true, is within a property owner’s rights and Plaintiff has not alleged that such signs or cameras have blocked or otherwise interfered with Plaintiff’s access to the Disputed Area.

1 37.

2 In Complaint Paragraphs 41 and 42, Plaintiff alleges that Harris’s counsel sent Plaintiff a
3 letter stating that Plaintiff does not have legal access to the Disputed Area, and that Harris and
4 Hildebrand have shared this information with DOGAMI. Plaintiff has not alleged that such
5 expressed legal opinions somehow block or otherwise interfere with Plaintiff’s access to the
6 Disputed Area.

7 38.

8 In Complaint Paragraphs 52 and 58, Plaintiff alleges that the Hildebrands and Harris “have
9 impaired, obstructed, and denied Saunders’ access,” which statement is a mere conclusion not
10 supported by any facts alleged in the Complaint.

11 39.

12 Plaintiff fails to state ultimate facts from which relief may be granted for interference with
13 easement, and therefore no such relief may be awarded by the Court.

14 **FIFTH AFFIRMATIVE DEFENSE**
15 **(Failure to State a Claim- Injunction)**

16 40.

17 Defendants incorporate by reference Paragraphs 35-38 above as if fully stated herein.

18 41.

19 In Complaint Paragraph 52, although Plaintiff has not alleged any facts alleging even a
20 single incident of Defendants somehow blocking or interfering with Plaintiff’s access to the
21 Disputed Area, Plaintiff then alleges that such actions by Defendants “substantially and
22 unreasonably interfere with Saunders’ quarrying and reclamation rights.” Such statement is not
23 supported by any alleged facts in the Complaint.

24 42.

25 Plaintiff fails to state ultimate facts from which relief may be granted for injunction, and
26 therefore no such relief may be awarded by the Court.

1 **SIXTH AFFIRMATIVE DEFENSE**

2 **(Failure to State a Claim – Quitclaim Deeds)**

3 43.

4 Plaintiff provided Ruth and Robert Osborne with no consideration for the Quitclaim Deeds
5 attached to the Complaint as Exhibits R and S, and the deeds are therefore void for lack of
6 consideration.

7 44.

8 Robert and Ruth Osborne held no right or interest in the Hildebrand property at the time
9 they executed the Quitclaim Deeds attached to the Complaint as Exhibits R and S.

10 45.

11 Plaintiff fails to state ultimate facts from which relief may be granted based on Plaintiff's
12 acquisition of the Quitclaim Deeds attached to the Complaint as Exhibits R and S, and therefore
13 no relief may be granted to Plaintiff on any of Plaintiff's claims.

14 **RESERVATION OF AFFIRMATIVE DEFENSES**

15 46.

16 Defendants hereby reserve the right to amend this Answer and assert additional affirmative
17 defenses at a later time.

18 **CLAIM FOR ATTORNEY FEES**

19 47.

20 Plaintiff brought its claims in this case without any objectively reasonable basis for
21 asserting such claims. As such, Defendants are entitled to an award of their reasonable attorney
22 fees pursuant to ORS 20.105.

23 **COUNTERCLAIMS**

24 Having answered Plaintiff's Complaint, Defendants allege as follows:

25 48.

26 The Hildebrands own certain real property located in Yamhill County, Oregon that is

1 described in the Statutory Warranty Deed dated October 22, 2020, attached as Exhibit N to
2 Plaintiff's Complaint ("Hildebrands' property"). The Statutory Warranty Deed conveyed the
3 described real property to the Hildebrands free and clear of any encumbrances not expressly stated
4 in such deed.

5 49.

6 Harris owns certain real property located in Yamhill County, Oregon described as Tax Lot
7 1600 within Township 3 South, Range 2 West, Section 23, W.M. Such property consists of a
8 vacated roadway owned by Yamhill County until conveyed by Yamhill County to the Hildebrands
9 on February 1, 2024, and then conveyed by the Hildebrands to Harris on April 12, 2024.

10 50.

11 Plaintiff holds an operator permit issued by the Oregon Department of Geology and
12 Mineral Industries ("DOGAMI") for reclamation activities on the Hildebrands' property and
13 neighboring property to the west of the Hildebrands' property. The operator permit does not grant
14 Plaintiff legal access to real property. Such legal access to real property must be obtained
15 separately from the DOGAMI operator permit.

16 51.

17 Plaintiff completed a transfer of the DOGAMI operator permit to itself in 2020. On
18 information and belief, Plaintiff's predecessors who held the DOGAMI operator permit leased the
19 Hildebrands' property from the Hildebrands' predecessor in interest, Fred Mickelson.

20 52.

21 On information and belief, Plaintiff leased the Hildebrands' property from the Hildebrands'
22 predecessor in interest, Fred Mickelson. Plaintiff declined to lease the Hildebrands' property from
23 the Hildebrands, and therefore Plaintiff has held no lease to access or use the Hildebrands' property
24 beginning October 22, 2020.

25 53.

26 Harris entered into a contract with the Hildebrands on July 21, 2023 to purchase a portion
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1 of the Hildebrands' property that includes the Disputed Area defined in Plaintiff's Complaint. The
2 purpose of Harris's prospective purchase is to herself reclaim the area of the former mine that is
3 located on the Hildebrands' property.

4 54.

5 Plaintiff agreed in December of 2023 to split the DOGAMI operator permit to allow Harris
6 to complete reclamation activities on the Hildebrands' property, with Plaintiff retaining an
7 operating permit to complete reclamation activities on the neighboring property Plaintiff leases.
8 Plaintiff then revoked its agreement to split the DOGAMI operator permit on or about March of
9 2024.

10 55.

11 On March 8, 2024, Plaintiff asserted for the first time in a letter to Harris that it claims the
12 right to use the Hildebrands' property without authorization from and without compensation to the
13 Hildebrands. In support of its assertions, Plaintiff cited a non-remonstrance provision from a 1983
14 Land Sale Contract between Robert Osborn and Fred and Joan Mickelson that: 1) does not
15 factually or textually support Plaintiff's claim; and 2) was conveyed to Robert Osborne's successor
16 in interest, Quadco Rock & Paving, Inc., in a 1984 Bargain and Sale Deed, reserving no rights or
17 interests to the Osbornes.

18 56.

19 Plaintiff thereafter obtained Robert and Ruth Osborne's signatures on Quitclaim Deeds
20 dated May 1, 2024 and July 25, 2024, respectively, purportedly transferring any remaining
21 interests the Osbornes held from the 1983 Land Sale Contract to Plaintiff. Neither Robert nor Ruth
22 Osborne retained any rights or interests in the Hildebrands' property at the time they executed the
23 Quitclaim Deeds. Additionally, Plaintiff paid no consideration to Robert or Ruth Osborne for
24 execution of the Quitclaim Deeds.

25 57.

26 Plaintiff asserts the right to access and use the Hildebrands' property solely on the basis of
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1 the 2024 Quitclaim Deeds executed by Robert and Ruth Osborne. See Complaint, para. 47
2 (“Saunders contends that it has assumed the Profit from Mr. Osborne and his ex-wife via quitclaim
3 deeds recorded in 2024.”) As such, Plaintiff admits it held no legal right or interest to access or
4 use the Hildebrands’ property from October 22, 2020 through July 25, 2024.

5 58.

6 The DOGAMI reclamation plan includes an approximately eight-acre area on the
7 Hildebrands’ property for reclamation under the operator permit. The 1983 Land Sale Contract
8 non-remonstrance provision relied upon by Plaintiff references only an approximately five-acre
9 area. Plaintiff has raised no factual or legal arguments to support its access or use of the remaining
10 approximately three-acre area under the reclamation plan, and therefore admits it has no legal
11 rights or interests to access or use the additional three-acre area included in the reclamation plan.

12 59.

13 Plaintiff has entered the Hildebrands’ property and conducted the following activities
14 during the time period from October 22, 2020 through the present date on the entire eight-acre
15 portion of the Hildebrands’ property: operating trucks and heavy equipment; dumping clean fill;
16 dumping garbage and refuse that does not meet the definition of clean fill in violation of Oregon
17 law; blasting and removing gravel from the property in violation of the reclamation plan; building
18 a berm and roadway; flooding the Hildebrands’ property from construction of the berm; and
19 covering the Hildebrands’ “No Trespassing” signs with dumped materials. Plaintiff conducted
20 these activities without any permission or authorization from the Hildebrands, and after the
21 Hildebrands informed Plaintiff it was trespassing on their property.

22 60.

23 Plaintiff benefitted financially from its activities described in Paragraph 59 above.

24 61.

25 Prior to the Hildebrands’ purchase of the Hildebrands’ property, the Hildebrands met onsite
26 with Plaintiff’s representative, Todd Saunders, who represented to them in the meeting that he

1 completed reseeding of the property they were purchasing under the DOGAMI reclamation plan.
2 Mr. Saunders misrepresented the status of the reseeding, as it was not done, which has led to
3 establishment of invasive plants, including blackberries, on the Hildebrands' property.

4 **FIRST COUNTERCLAIM**
5 **(Declaratory Judgment/Quiet Title)**

6 62.

7 Defendants incorporate by reference their foregoing allegations as if fully restated herein.

8 63.

9 The Hildebrands own the Hildebrands' property in fee title.

10 64.

11 Plaintiff is without any legal right or interest in the Hildebrands' property.

12 65.

13 The Hildebrands are entitled to declaratory judgment and quiet title as to their ownership
14 of the Hildebrands' property.

15 **SECOND COUNTERCLAIM**
16 **(Trespass)**

17 66.

18 Defendants incorporate by reference their foregoing allegations as if fully restated herein.

19 67.

20 As a result of Plaintiff's entry on the Hildebrands' property and activities set forth in
21 Paragraph 59 above, the Hildebrands suffered damages in an amount to be proved at trial, but not
22 less than \$1,096,850.00, representing the fair rental value (\$144,000.00), loss of royalties
23 (\$369,000.00), loss of rock removed from the Hildebrands' property (\$558,850.00), and correcting
24 drainage and flooding issues (\$25,000.00).

25 68.

26 The Hildebrands are entitled to judgment against Plaintiff for trespass, including an award

1 of damages in an amount to be proved at trial, but not less than \$1,096,850.00.

2 **THIRD COUNTERCLAIM**

3 **(Conversion)**

4 69.

5 Defendants incorporate by reference their foregoing allegations as if fully restated herein.

6 70.

7 Plaintiff has no right or interest in the rock or gravel resources located on and in the
8 Hildebrands' property.

9 71.

10 Plaintiff has conducted blasting and removal of rock and gravel from the Hildebrands'
11 property, thereby exercising dominion and control over property rightfully belonging to the
12 Hildebrands.

13 72.

14 As a result of Plaintiff's actions, the Hildebrands suffered damages in an amount to be
15 proved at trial, but not less than \$1,096,850.00, representing the fair rental value (\$144,000.00),
16 loss of royalties (\$369,000.00), loss of rock removed from the Hildebrands' property
17 (\$558,850.00), and correcting drainage and flooding issues (\$25,000.00).

18 73.

19 The Hildebrands are entitled to judgment against Plaintiffs for conversion, including an
20 award of damages in an amount to be proved at trial, but not less than \$1,096,850.00.

21 **FOURTH COUNTERCLAIM**

22 **(Private Nuisance)**

23 74.

24 Defendants incorporate by reference their foregoing allegations as if fully restated herein.

25 75.

26 Plaintiff has interfered with the Hildebrands' use and enjoyment of the Hildebrands'

1 property by engaging in the activities set forth in Paragraphs 59 and 61 above. Such interference
2 is both substantial and unreasonable.

3 76.

4 Plaintiff's interference with the Hildebrands' use and enjoyment of the Hildebrands'
5 property was intentional because it was done for the purpose of causing the invasion or with
6 knowledge that the interference would result from its conduct.

7 77.

8 As a result of Plaintiff's actions, the Hildebrands suffered damages in an amount to be
9 proved at trial, but not less than \$1,105,350.00, representing the fair rental value (\$144,000.00),
10 loss of royalties (\$369,000.00), loss of rock removed from the Hildebrands' property
11 (\$558,850.00), correcting drainage and flooding issues (\$25,000.00), and causing invasive plants
12 to establish (\$8,500.00).

13 78.

14 The Hildebrands are entitled to judgment against Plaintiffs for nuisance, including an
15 award of damages in an amount to be proved at trial, but not less than \$1,105,350.00.

16 **FIFTH COUNTERCLAIM**

17 **(Intentional Interference with Contractual Relations)**

18 79.

19 A contract exists for Harris to purchase the Hildebrands' property from the Hildebrands.

20 80.

21 Plaintiff intentionally interfered with Harris and the Hildebrands moving forward with the
22 sales contract and deprived Harris and the Hildebrands from the economic advantage of that
23 contract.

24 81.

25 Plaintiff induced Harris to move forward with her financial investments in anticipation of
26 purchasing the Hildebrands' property when Plaintiff agreed to split with Harris the DOGAMI

1 operating permit, which agreement Plaintiff later revoked.

2 82.

3 Plaintiff interfered with Harris's and Hildebrands' contract through improper means, by
4 fabricating alleged rights and interests in the Hildebrands' property that do not exist, and
5 attempting to assert conveyance of such rights and interests from Robert and Ruth Osborne to
6 Plaintiff through Quitclaim Deeds that are void for lack of consideration. Plaintiff initiated this
7 litigation to attempt to get Harris and Hildebrand to relent to Plaintiff's trespass and conversion of
8 the Hildebrands' property.

9 83.

10 Plaintiff's interference with Harris's and Hildebrands' contract caused Harris and
11 Hildebrand to suffer damages. The Hildebrands suffered damages in an amount to be proved at
12 trial, but not less than of 9% annual statutory interest on the \$150,000.000 contract price, or
13 \$66,348.49 as of the date of this filing. Harris suffered damages in an amount to be proved at trial,
14 but not less than \$360,000.00, representing the net income Harris would have earned from her use
15 of the Hildebrands' property had Plaintiff not interfered.

16 84.

17 The Hildebrands and Harris are entitled to judgment against Plaintiffs for intentional
18 interference with contractual relations, including an award of damages in an amount to be proved
19 at trial, but not less than \$426,348.49, representing \$66,348.49 to the Hildebrands, and
20 \$360,000.00 to Harris. .

21 **PRAYER FOR RELIEF**

22 WHEREFORE, Defendants demand a jury trial and pray for judgment as follows:

- 23 1. That Plaintiff takes nothing by its Complaint;
24 2. That the Complaint be dismissed in its entirety with prejudice;
25 3. That Defendants be awarded their costs of suit and disbursements incurred herein
26 in an amount determined by the Court under ORCP 68, and a prevailing party fee;

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4. Awarding Defendants their reasonable attorney fees pursuant to ORS 20.105;

5. Granting declaratory judgment and quiet title to the Hildebrands;

6. Granting judgment to the Hildebrands for Plaintiff's trespass, conversion, and nuisance, and awarding the Hildebrands their damages, in an amount to be proved at trial, but not less than \$1,105,350.00;

7. Granting judgment to the Hildebrands and Harris for Plaintiff's intentional interference with contractual relations, in an amount to be proved at trial, but not less than \$426,348.49;

8. Granting such other and further relief as the Court deems just or equitable under the circumstances.

Dated: January 22, 2025.

DUNN CARNEY ALLEN HIGGINS & TONGUE LLP

/s/ Sarah R. Liljefelt

Sarah R. Liljefelt, OSB #104396

Email: sliljefelt@dunncarney.com

John H. Chambers, OSB #922538

Email: jchambers@dunncarney.com

Attorneys for Defendants

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that a true copy of the foregoing **DEFENDANTS' JOINT ANSWER,**
3 **AFFIRMATIVE DEFENSES, AND COUNTERCLAIMS** was served on:

4 Craig G. Russillo
5 Mario E. Delegato
6 Amanda Kohls
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8 Attorneys for Plaintiff

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Fax #:503-796-2900
☒ By serving through the
eFiling system at the party's
email address as recorded on
the date of service in the
eFiling system

13 *With first-class postage prepaid and deposited in Portland, Oregon.

14 Dated: January 22, 2025.

15 DUNN CARNEY ALLEN HIGGINS & TONGUE LLP

16 /s/ Sarah R. Liljefelt

17 _____
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